

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

DENNIS E. HECKER,

BKY. No. 09-50779
DEBTOR'S VERIFIED STATEMENT

Debtor.

Debtor, as and for his Response to the trustee's motion for turnover, provides as follows:

1. The trustee asked debtor, through his attorney, where two Hummer golf carts were. Debtor responded that he had not seen them in years, and the last he knew they were at one of his former car dealerships (There were more than 20 dealerships).
2. The trustee has now brought a motion for turnover. Debtor cannot comply with a demand for turnover because, as he has previously told the trustee, he does not have the golf carts, and he has not seen the golf carts in years.
3. When debtor received the latest motion from the trustee, he called one of the former general managers of his former stores named Pat Terhaar. Mr. Terhaar told Mr. Hecker he had no knowledge of where or who the golf carts were sold to.
4. Debtor last saw the Hummer golf carts on Halloween evening in 2006, when they were delivered to his home to help shuttle guests.
5. Mr. Tehaar recalled that the golf carts were returned to one of the dealerships after the party, where they were part of the regular resale inventory. He believes that one or both golf carts were sold or traded to a tribal member from the Mystic Lake community.
6. The golf carts were sold or traded at the time that Mr. Hecker's dealerships were selling approximately 20,000 plus cars, trucks, boats, and golf carts per year. Debtor has no way of knowing which dealership sold them or to whom they were sold.

7. Debtor encourages the trustee to contact the repair service garage who supplied information regarding the golf cart's existence. They may have information of when and who brought them in for service.

Date: June 10, 2010

/e/ Barbara J. May

Barbara J. May
2780 N. Snelling #102
Roseville, MN 55113
651-486-8887
Attorney ID 129689

Debtor herein, having reviewed the attached document , declares under penalty of perjury that he knows the information contained herein to be true and correct to the best of his knowledge.

Dated: 6/9/10



DENNIS E. HECKER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

DENNIS E. HECKER,

BKY. No. 09-50779

Debtor.

**DEBTOR'S MEMORANDUM OF LAW
IN OPPOSITION TO TURNOVER MOTION**

INTRODUCTION

The Trustee has brought a Motion for Turnover of Property, seeking an order directing the Debtor to turn over two Hummer golf carts within 7 days. The Trustee does not allege that these golf carts are presently in the Debtor's possession or control. The Debtor's Response states that he has not seen the golf carts since 2006, and that he believes the golf carts were part of one of his car dealerships' regular inventory, and that they were sold or traded in the ordinary course of business.

ARGUMENT

11 U.S.C. §542(a) DOES NOT AUTHORIZE A TURNOVER ORDER DIRECTED TO A PERSON NOT IN POSSESSION OF THE PROPERTY TO BE TURNED OVER.

The Trustee brings this motion under 11 U.S.C. §542(a), which requires a person to “deliver to the trustee” certain property within his “possession, custody, or control”:

[A]n entity, other than a custodian, in possession, custody or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

The Trustee does not allege that the Debtor has possession, custody or control of these golf carts. The Debtor has in fact not seen those golf carts since 2006, and his efforts to determine their present whereabouts have not been successful.

The property, initially, must be property of the estate under §541. That is, the debtor must have had an interest in the property *at the time of filing*. *In re Pyatt*, 489 F. 3d 423, 427 (8th Cir. 2007). In addition, the person directed to turn over property must have possession, custody or control of the property *at the time of the trustee’s motion*. *Pyatt*, 486 F. 3d at 428 [“**[T]he trustee cannot now compel him to turn over property which is no longer within his control.**”]. [Emphasis added].

CONCLUSION

The Trustee asks for a turnover order directing the Debtor to do the impossible: to turn over property over which he has neither possession, custody, nor control. Such an order is not authorized by §542(a) or any other provision of the Bankruptcy Code. The motion must be denied.

Date: June 11, 2010

/s/ Barbara J. May

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UNITED STATES BANKRUPTCY COURT
District of Minnesota

In Re: DENNIS E. HECKER

Case No.09-50779

Debtors

Chapter 13

ORDER

This matter came before the court on the trustee's motion for turnover. Based on all of the files and pleadings, this court makes the following ORDER:

- 1) The trustee's motion is denied.

Dated:_____

Robert F. Kressel
Chief of Bankruptcy Court

STATE OF MINNESOTA

) SS

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Case No.:BKY 09-50779

COUNTY OF RAMSEY

)

Barbara J. May, being duly sworn upon oath, says that on the 11th day of June, 2010, she served via US

Mail, the Verified statement, memorandum in opposition and proposed order, on:

U.S. Trustee
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BY ELECTRONIC NOTICE

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All creditors on attached list

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/s/ Barbara J. May

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